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10 Attorneys for Defendants  
11 HARVEST REDWOOD RETIREMENT RESIDENCE,  
12 L.L.C., doing business as Redwood Retirement Residence,  
13 RETIREMENT RESIDENCE, L.L.C.; and HOLIDAY  
14 RETIREMENT CORP.

15 **UNITED STATES DISTRICT COURT**

16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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GREATER NAPA FAIR HOUSING  
CENTER, a California Not for Profit  
Corporation, doing business as FAIR  
HOUSING NAPA VALLEY, as an  
individual entity only; RUBY DUNCAN,  
an incompetent adult, by and through her  
Guardian Ad Litem, MAE LOUISE  
WHITAKER; and EVA NORTHERN, an  
incompetent adult, by and through her  
Guardian Ad Litem, NANCY  
NORTHERN, each individually and on  
behalf of individuals similarly situated;  
NANCY NORTHERN, in her individual  
capacity only; and MAE LOUISE  
WHITAKER, in her individual capacity  
only,

Plaintiffs,

v.

HARVEST REDWOOD RETIREMENT  
RESIDENCE, L.L.C., doing business as  
Redwood Retirement Residence;  
REDWOOD RETIREMENT RESIDENCE  
L.L.C.; and HOLIDAY RETIREMENT  
CORP.,

Defendants.

No. C07-3652 PJH

**REQUEST TO SUBMIT SUPPLEMENTAL  
DECLARATION IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION; AND  
DECLARATION OF KENNETH BRADY**

Date: September 26, 2007  
Time: 9:00 a.m.  
Dept: Ctrm. 3, 17th Fl.  
Judge: Hon. Phyllis J. Hamilton

1 Defendants Harvest Redwood Retirement Residence, LLC, Redwood Retirement  
2 Residence, Redwood Retirement Residence LLC, and Holiday Retirement Corporation  
3 (hereinafter "Defendants") respectfully request the Court to allow Defendants to submit a  
4 supplementary declaration in opposition to Plaintiffs' Motion for Preliminary Injunction. This  
5 request is made on the grounds that Plaintiffs submitted additional evidence with their reply  
6 papers to which Defendants should be given a reasonable opportunity to respond, and that  
7 Plaintiffs' motion is otherwise premature with no initial disclosures or discovery to date.

8 This request is based on the memorandum of law that follows, and all the pleadings and  
9 papers on file in this action. The declaration of Redwood resident Kenneth Brady is attached to  
10 this request.

## 11 **MEMORANDUM OF LAW**

### 12 **I. FACTS**

13 The Complaint in this case was filed on July 16, 2007, and served on July 19, 2007.  
14 Plaintiffs' filed their Motion for Preliminary Injunction shortly thereafter, and Defendants filed  
15 their Opposition to Plaintiffs' Motion for Preliminary Injunction on September 5, 2007. On  
16 September 12, 2007, Plaintiffs filed a Reply to Defendants' Opposition. Plaintiffs submitted four  
17 new declarations along with their Reply brief. Defendants objected to Plaintiffs' supplemental  
18 declaration on September 19, 2007.

### 19 **II. ARGUMENT**

20 As a general rule, reply papers should be limited to matters raised in the opposition  
21 papers. It is improper for the moving party to "shift gears" and introduce new facts or different  
22 legal arguments in the reply brief than presented in the moving papers. *See Lujan v. National*  
23 *Wildlife Federation*, 497 U.S. 871, 894-95 (1990). And while Civil Local Rule 7.3 allows parties  
24 to submit declarations along with reply briefs, the opposing party should be given a reasonable  
25 opportunity to respond to new evidence. *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164-65  
26 (10th Cir. 1998).

27 In response to the four new declarations submitted by Plaintiffs on reply, Defendants ask  
28 the Court to consider the attached declaration of Kenneth Brady in support of its Opposition, filed

1 herewith. These papers are limited in scope and would allow the Court to fully examine the  
2 issues presented in Plaintiffs' Motion.

3 Accordingly, Defendants respectfully request that the Court grant its request to submit the  
4 Declaration of Kenneth Brady.

5 DATED: September 20, 2007

6 HANSON BRIDGETT MARCUS  
7 VLAHOS & RUDY, LLP

8 By: 

9 KURT A. FRANKLIN  
SARAH D. MOTT  
10 Attorneys for Defendants

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27 NORTHERN, each individually and on  
28 behalf of individuals similarly situated;  
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RESIDENCE, L.L.C., doing business as  
Redwood Retirement Residence;  
REDWOOD RETIREMENT RESIDENCE  
L.L.C.; and HOLIDAY RETIREMENT  
CORP.,

Defendants.

No. C 07 3652 PJH

**DECLARATION OF KENNETH BRADY  
IN SUPPORT OF DEFENDANT'S  
OPPOSITION TO MOTION FOR  
ISSUANCE OF PRELIMINARY  
INJUNCTION**

Date: September 26, 2007  
Time: 9:00 a.m.  
Dept: Ctrm. 3, 17th Fl.  
Judge: Hon. Phyllis J. Hamilton

1 I, Kenneth Brady, hereby declare that I have personal knowledge of the facts set forth  
 2 herein and, if called upon to testify, I could truthfully and competently testify to the following:

3 1. My wife (Ruby Brady) and I became residents at Redwood Retirement Residence  
 4 ("Redwood" or "Residence) in May 2007. I am 90 years old, and sometimes use a cane or other  
 5 assistive device to walk.

6 2. While I understand that I am a witness to events that occur at the Residence,  
 7 presently neither my wife, nor I, are interested in becoming plaintiffs or otherwise becoming  
 8 involved in any lawsuit or litigation -- through a purported representative or by any other means.

9 3. Dorman "Pete" Mitchell was our immediate neighbor at the Residence. Mr.  
 10 Mitchell had a hearing problem and would listen to his television or radio late into the night at an  
 11 unacceptable volume. It was so loud that it caused us to complain to the managers about the noise.  
 12 The managers worked with him so that he would use headphones, so as not to bother us and other  
 13 neighbors.

14 4. In addition to the loud radio and television, at other times my wife and I could  
 15 hear Mr. Mitchell call out for help. I specifically recall him falling inside his apartment on two or  
 16 three occasions where an ambulance came and took him away. One morning, I found him  
 17 completely nude on his apartment floor -- where he had fallen between two chairs. It was cold  
 18 that night, and Mr. Mitchell was shivering when I found him. Because I have a bad back, I was  
 19 not able to help him. I called a manager, who in turn called an ambulance. After one of his falls,  
 20 his caregiver asked me not to report the fall to the managers at Redwood.

21 5. I am aware that Mr. Mitchell had an incontinence problem that he could not  
 22 manage. One time, he knocked on our door and asked to use our bathroom. My wife answered  
 23 the door and told him I was in the bathroom. Mr. Mitchell urinated on the floor.

24 6. I felt sorry for Mr. Mitchell, because he did not have family that helped him.  
 25 However, his loud television playing or radio playing, in addition to his cries for help, was  
 26 disruptive to our home.

27 7. Mr. Mitchell no longer lives next door to us. On information and belief, it is my  
 28 understanding that Mr. Mitchell was hospitalized in August 2007, and that he has since moved to

1 a facility that is able to provide him with the care and other attention that he needs.

2 I declare under penalty of perjury under the laws of the State of California that the  
3 foregoing is true and correct. Executed this 17 day of September, 2007 at WFB, Ca,  
4 California.

5 *Kenneth O Brady*

6 Kenneth Brady

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DECL KENNETH BRADY IN SUPPT OPPO TO MTN FOR PRELIM  
INJUNCTION (CASE NO. C 07 3652 PJH)

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